

DECISION



18394
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198905

DATE: June 10, 1981

MATTER OF: BKC Incorporated; RAIL Company;
JWK International Corporation

DIGEST:

1. Offeror's contention that, based on awardee's low price, scope of work awarded was inconsistent with that stated in solicitation, submitted in comments in response to agency's notice of protest of another firm, will not be considered because issue was not timely presented for consideration.
2. Objections of offeror initially protested to contracting agency and after repeated denials of protest submitted in comments to GAO in conjunction with another protest will not be considered on merits where issues regarding small business size standard of solicitation and size status of awardee are not subject to review by GAO and issues concerning awardee's compliance with security clearance requirements were not timely protested to GAO within 10 working days after contracting agency's initial denial of protest.
3. Where solicitation lists basic evaluation criteria and warns offerors to completely address proposed system and method of performing required services, offerors are on notice that failure to provide adequate information involves risk of proposal rejection.

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4. Agency rejection of initial proposal as technically unacceptable was reasonable, notwithstanding lower proposal price, where solicitation required detailed explanation of offeror's systems approach and method of performing services. Protester's failure to provide such information indicated lack of understanding of scope and nature of work, and more than one firm remained in competitive range.

BKC Incorporated (BKC) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. F04606-80-R-0328, issued by the Department of the Air Force. The RFP, a total small business set-aside, is for the Staff Planning Function (SPF) group of the Reporting Analysis Planning System (RAPS) program for the Royal Saudi Air Force. The SPF group is to provide data and management and analysis services to support the Saudi program, acting as a surrogate staff for Saudi requirements submitted to the Air Force because the Saudi Headquarters does not have a staff for this purpose. The staff planning functions include surveillance of training requirements, precision measurement equipment laboratories expansion, supply integration, and financial planning.

BKC asserts that the evaluation of its technical proposal was neither proper nor impartial, pointing out that the proposal was written by experienced, retired Air Force personnel familiar with the current RAPS contract and Air Force philosophy, and BKC has unique knowledge and experience as surrogate staff for the Saudi Arabian Air Defense Command. The protester contends that the Air Force's erroneous technical evaluation prevented the agency from accepting BKC's lower proposal price and asks that its proposal be reevaluated as technically acceptable.

Of the four proposals received, only that of SPF, Inc., was deemed acceptable. Those of RAIL Company and JWK International Corporation (JWK) were determined to be marginal (susceptible of being made acceptable by additional technical information). Negotiations were held with all offerors except BKC and the firms submitted best and final offers. Upon receipt of notice from the Air Force that its technical proposal was determined unacceptable, BKC requested and was given a written debriefing of the reasons its proposal was unacceptable. In the interim, the Air Force awarded the contract to SPF, Inc.

The other unsuccessful offerors have commented on the protest. RAIL Company states that based on the award price there appears to be a significant disparity between the scope of the RFP statement of work (SOW) and the work the Air Force desired; therefore, it would be in the agency's best interests to cancel the award and resolicit its requirements using a more definite SOW.

JWK initially protested to the Air Force that SPF, Inc. was not eligible for the award questioning the firm's status as a small business, competitive advantage as the incumbent contractor and qualification for required facility and personnel security clearances. The Air Force replied that the Small Business Administration (SBA) Size Appeals Board confirmed that the RFP definition of small business concern was proper, that SPF, Inc. certified that it was a small business concern and that JWK's questions concerning the firm's capability to perform the contract were investigated and considered by the contracting officer in determining that SPF, Inc. was a responsible offeror. JWK renewed its complaint about the firm's security clearances twice, and the Air Force assured JWK that SPF, Inc. satisfactorily demonstrated its ability to obtain proper security clearances and that the Air Force would closely monitor the contract to be sure that no classified information passed to contractor personnel without clearances. In reply to the agency's notice of BKC's protest here, JWK stated that the matters protested to the contracting agency remain valid and should be reviewed by our Office.

The issues raised by RAIL Company and JWK will not be considered on the merits. The comments were filed in response to the agency's notice to the firms of BKC's protest, pursuant to DAR § 2-407.8(a)(3) (1976 ed.) and 4 C.F.R. § 20.3(a) (1980), and concern matters which are either untimely presented for our consideration and/or not subject to our review.

To the extent RAIL Company questions the adequacy of the SOW as a statement of the Government's actual minimum needs, its objections concern alleged improprieties in the RFP specifications which were apparent and therefore should have been protested to the contracting agency or to our Office prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1980). Insofar as RAIL Company suggests that the SPF, Inc. proposal price indicates that the contract awarded was inconsistent with the SOW, the notice of award apprised the company of this protest basis, requiring the filing of a protest within 10 working days. 4 C.F.R. § 20.2(b)(2) (1980); see Century Industries, Inc., B-197933, B-197945, June 11, 1980, 80-1 CPD 408. Because RAIL Company's objections were not filed either with our Office or the contracting agency until more than 10 working days after notice of the award, its protest was not timely presented for our consideration.

Because JWK initially protested to the Air Force, any subsequent protest to our Office, in order to be timely, must have been filed within 10 working days after the firm's receipt of the Air Force's initial denial of its protest. 4 C.F.R. § 20.2(a) (1980). The fact that JWK continued to pursue the matter with the Air Force despite the agency's repeated rejections of its protest does not extend the time or obviate the necessity for timely filing a protest with our Office. Control Data Corporation, B-193487, December 12, 1978, 78-2 CPD 408; Information, International, Inc., B-191013, May 31, 1978, 78-1 CPD 406. Furthermore, several of the matters JWK raised are not subject to review by our Office. In this regard, a

contracting officer's determination of the applicable size standard for a solicitation is final unless, as here, it is appealed to the SBA Size Appeals Board. 13 C.F.R. § 121.3-8 (1980); Otis Elevator Company, B-196076, February 1, 1980, 80-1 CPD 86. SBA, not GAO, is statutorily empowered to conclusively determine matters of small business size status for Federal procurement purposes. 15 U.S.C. § 637(b) (1976); Towson Industrial Maintenance Corp., B-199349, October 7, 1980, 80-2 CPD 248. Therefore, JWK's contentions are neither appropriate nor timely raised for our consideration.

In discussing BKC's protest, the Air Force takes the position that notwithstanding the experience of the protester's personnel, the firm's qualifications were not adequately addressed in its proposal to reflect BKC's capability to fulfill the contracting agency's needs, citing our decisions in Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325, and Bell Helicopter Textron, 59 Comp. Gen. 158 (1979), 79-2 CPD 431. Contrary to the RFP instructions for preparation of proposals, BKC did not provide the requisite detailed explanation of its systems approach, systems definition and implementation, and use of major equipment to be employed in performing the contract. The evaluation team concluded that the deficiencies in the protester's proposal were so great that BKC's proposal would have to be completely rewritten in order to be properly evaluated.

BKC, however, insists that the deficiencies cited by the Air Force concern only minor points which the agency's evaluators obviously misinterpreted and do not constitute valid reasons to reject its proposal.

The determination as to the technical acceptability of a proposal is one within the discretion of the procuring agency which we will not disturb unless it is clearly shown to be unreasonable, an arbitrary abuse of discretion or a violation of procurement laws or regulations. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231; Kirschner Associates, Inc., B-178887, April 10, 1974, 74-1 CPD 182. Therefore, our function is not to evaluate

proposals and make our own determination as to their acceptability, but to examine the record and apply the reasonableness standard to the contracting agency's determination. While there is obviously strong disagreement between BKC and the Air Force as to the validity and severity of the technical deficiencies raised by the technical evaluation team, it is not our function to resolve such technical disputes, nor does the fact that BKC disagrees with the Air Force evaluation of its proposal render the evaluation unreasonable, arbitrary, or illegal. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107; John M. Cockerham & Associates, Inc., et al., B-193124, March 14, 1979, 79-1 CPD 180; Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117; Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87. In reviewing the rejection of a proposal as technically unacceptable for informational deficiencies, we look at whether the RFP specifically required detailed information and, if so, whether the scope and range of the offeror's omissions indicate that it did not understand what it was required to do under the contract. In addition, we consider whether only one proposal was found to be within the competitive range. Duroyd Manufacturing Company, Inc., B-195762, November 16, 1979, 79-2 CPD 359; Decilog, B-1986f4, September 3, 1980, 80-2 CPD 169.

Clause L-39 of the RFP advises offerors to submit proposals which are complete and clearly acceptable without additional explanation or information. The RFP instructions for preparing technical proposals require, among other things, that the proposal contain detailed descriptions of the offeror's proposed approach to the problems, acknowledge every requirement of the specification on a step-by-step basis, indicating the offeror's ability to comply with each requirement and include the information necessary for evaluators to form concrete conclusions about the offeror's response to each requirement. The RFP also provides that paraphrasing the specifications will be evaluated as insufficient data and is not acceptable, and that a technical proposal will

be considered unacceptable if it does not meet the specifications or is so lacking in information that proper evaluation would require complete rewriting of the proposal.

The Air Force states that its evaluation team considered BKC's proposal technically unacceptable primarily because BKC did not demonstrate that it understood the SPF role as surrogate staff for the RSAF, a basic requirement of the RFP which affected most of the tasks in the SOW. The agency's written debriefing points to the protester's proposal suggestion that the contractor be informed of Saudi informational requests before the Air Force response is prepared and its statement that each Saudi request would be reviewed to see how it could be satisfied with existing Air Force resources. The agency believed that this indicated BKC's incorrect interpretation of the SPF surrogate role. This is because as a surrogate staff the SPF would know of Saudi requests and should analyze them from the Saudi viewpoint concerning the validity and completeness of the request and whether it can be satisfied from existing Saudi resources, rather than from the viewpoint of the Air Force.

The evaluation team also found BKC's description of its technical qualifications to perform the tasks required by the SOW inadequate. In this regard, the written debriefing explains that BKC's proposal merely states that the firm understands or is qualified to perform the tasks. The proposal does not demonstrate how the studies and analysis of Saudi requests will be accomplished, does not mention or define data which would be provided by or to the program Acquisition Management Information System (RAMIS) or identify data sources for or discuss how contract data requirements list items will be developed. Although the RFP specifies a level of effort of 12 man-months for a training analyst, the debriefing notes that BKC's proposal stated that the person whose resume was submitted in that capacity would assist on a consultant basis should his services be required. This did not show the protester's intent to furnish someone dedicated as a full-time training analyst.

The evaluation team's memorandum to the contracting officer further advises that BKC proposed the same person as both the SPF executive vice president and the overall operations manager despite the fact that the SOW includes the manager among the 10 full-time SPF personnel. In addition, the proposal did not identify an illustrator or a second secretary and merely stated that qualified backup personnel were available for the contract for operations, logistics, and training analysts without providing qualifications.

The memorandum characterizes BKC's proposal as essentially a restatement of the RFP specification requirements with little originality provided in the details for preparation of analyses and resolution of problems. As mentioned above, the evaluation team felt that BKC largely ignored the RFP instructions for proposal preparation which required detailed explanations of the manner and the means by which it would perform the work and provided little insight into the firm's performance capability. It was concluded that these deficiencies were so significant and extensive that the proposal would have to be completely rewritten to be evaluated.

The protester argues that considering BKC's personnel, the agency's initial objection is tantamount to stating that former Air Force personnel who recently worked on the agency's Saudi program do not understand the RAPS program. BKC contends that contrary to the Air Force debriefing, its proposal states that BKC will review Air Force responses to Saudi requests and provide comments to the Air Force. The firm explains that its suggestion that the contractor be informed of Saudi requests before the Air Force response is prepared was made because the SOW does not state that Saudi requests and additional facts would be directly transmitted to the contractor. The protester asserts that its proposal does state that each Saudi request would be studied to ascertain whether the requirement exists and cites examples where user mission analysis would be used.

BKC insists that it refers to its interface with RAMIS' throughout the entire proposal and

discusses the cognizant activities and distribution for required contract data items. The protester argues that because standards have long been established for specified tasks such as analyzing requests and preparing studies and the information regarding the contract requirements was also provided in the RFP, BKC did not feel it necessary to define these tasks in its proposal. The resume of the training analyst available as a consultant was included, BKC explains, as an additional source in order to demonstrate his expertise and to show that the firm had several qualified personnel available to perform the work. BKC concludes on the basis of the reasons given in the Air Force debriefing that its proposal did not receive a proper evaluation.

The terms of the RFP clearly required offerors to furnish detailed proposals defining the system they proposed and the method and means by which the services would be performed. Sufficient information to show compliance with the RFP requirements was also required. Offerors were advised that incomplete or otherwise deficient written proposals might be found unacceptable.

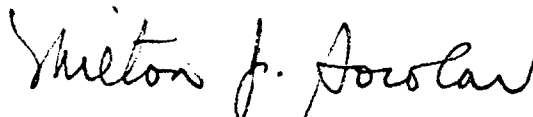
Although BKC may have considerable experience and be well qualified to fulfill the Air Force's requirements, that alone does not render the agency's evaluation of the protester's proposal unreasonable or otherwise improper. An offeror must translate its knowledge and capabilities into the initial proposal. Technical evaluations are not based upon expertise in the abstract, but upon the degree to which the offeror's written proposal adequately addresses the evaluation factors specified in the solicitation. RCA Corporation, et al., 57 Comp. Gen. 809, 818 (1978), 78-2 CPD 213; Didactic Systems, Inc., B-190507, June 7, 1978, 78-1 CPD 418; Servrite International, Ltd., supra; Decilog, supra.

Our review of the record, including the evaluation team memorandum and the proposals of BKC and SPF, Inc., indicates that the Air Force had a reasonable basis for regarding the protester's proposal as technically unacceptable primarily for informational deficiencies. For example, we concur in the evaluation team's

assessment that BKC's proposal frequently addressed the solicitation requirements by simply restating provisions of the RFP. We have held that proposal preparation instructions similar to those of the RFP in question are sufficient to warn offerors that merely "parroting" or paraphrasing the specifications or responding to the RFP requirements without details as to how particular requirements will be met would not be a satisfactory response. Under such circumstances, penalizing an offeror for such informational deficiencies is reasonable even if the offeror is thereby eliminated from the competitive range and precluded from submitting a best and final offer. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60, 70 (1975), 75-2 CPD 35. Finally, of particular significance, the exclusion of BKC's proposal did not result in a competitive range of one. Of the four offerors, only BKC was excluded.

Although BKC clearly does not agree with the Air Force evaluation of its proposal, we are unable to conclude that the evaluation was not conducted in accordance with the terms of the RFP or was based on anything other than the reasoned judgment of the evaluators. The fact that BKC's proposal was excluded from consideration for award notwithstanding its lower price is irrelevant, where, as here, an offer has properly been found to be technically unacceptable. Pacific Training & Technical Assistance Corporation, B-182742, July 9, 1975, 75-2 CPD 22; National Designers, Inc., B-181741, December 6, 1974, 74-2 CPD 316.

The protest of BKC is denied. The protests of RAIL and JWK are dismissed.



Acting Comptroller General
of the United States